

**STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS**

ORDER

Application 29233, Permit 20340

**ORDER APPROVING A NEW DEVELOPMENT SCHEDULE
AND AMENDING THE PERMIT**

WHEREAS:

1. Permit 20340 was issued to Keith Lukens and Terrill Lukens on June 16, 1989, pursuant to Application 29233.
2. A petition for an extension of time within which to develop the project and apply the water to the proposed use was filed with the State Water Resources Control Board (SWRCB) on December 22, 1999.
3. The permittee has proceeded with diligence and good cause has been shown for extension of time. Public notice of the request for extension of time was issued on April 14, 2000 and no protests were received.
4. The SWRCB has determined that the petition for extension of time does not constitute the initiation of a new right nor operate to the injury of any other lawful user of water.
5. Fish, wildlife, and plant species have been or may be listed under the federal Endangered Species Act and/or the California Endangered Species Act. A term should be placed in the permit making the permittee aware of possible obligations resulting from these acts.

NOW, THEREFORE, IT IS ORDERED THAT:

1. Condition 8 of the permit be amended to read:

Complete application of the water to the authorized use shall be made by
December 31, 2010.

(0000008)

2. An endangered Species term shall be added to read as follows:

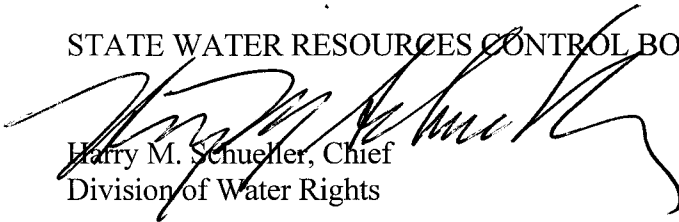
This permit does not authorize any act which results in the taking of a threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). If a "take" will result from any act authorized under this water right, the permittee shall obtain authorization for an incidental take prior to construction or operation of the project. Permittee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this permit.

(0000014)

Dated:

JUL 25 2000

STATE WATER RESOURCES CONTROL BOARD


Harry M. Schueller, Chief
Division of Water Rights

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS

ORDER

Application 29233 Permit 20340 License

ORDER APPROVING A NEW DEVELOPMENT SCHEDULE

WHEREAS:

1. Permit 20340 was issued to Keith Lukens and Terrill Lukens on June 16, 1989 pursuant to Application 29233.
2. A petition for an extension of time within which to develop the project and apply the water to the proposed use has been filed with the State Water Resources Control Board.
3. The permittee has proceeded with diligence and good cause has been shown for said extension of time.

NOW, THEREFORE, IT IS ORDERED THAT:

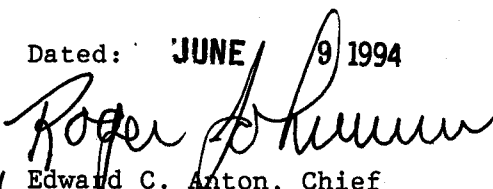
1. Condition 9 of the permit be amended to read:

COMPLETE APPLICATION OF THE
WATER TO THE PROPOSED USE
SHALL BE MADE ON OR BEFORE

December 31, 1999

(0000009)

Dated: JUNE 9 1994

for 
Edward C. Anton, Chief
Division of Water Rights

STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS

PERMIT FOR DIVERSION AND USE OF WATER

PERMIT 20340Application 29233 of Keith Lukens and Terrill Lukens120 Darlington Avenue, Auburn, California 95603filed on April 19, 1988, has been approved by the State Water Resources Control Board SUBJECT TO VESTED RIGHTS and to the limitations and conditions of this Permit.

Permittee is hereby authorized to divert and use water as follows:

1. Source:

Tributary to:

Unnamed SpringUnnamed Stream thenceCanyon Creek thenceNorth Fork American River

2. Location of point of diversion:

	40-acre subdivision of public land survey or projection thereof	Section	Town- ship	Range	Base and Meridian
North 500 feet and East 800 feet from SW corner of Section 29	SW $\frac{1}{4}$ of SW $\frac{1}{4}$	29	16N	11E	MD

County of Placer

3. Purpose of use:	4. Place of use:	Section	Town- ship	Range	Base and Meridian	Acres
Industrial	Bottling plants, located in Milpitas, Calistoga and San Carlos for general distribution of bottled water.					

The place of use is shown on map filed with the State Water Resources Control Board.

5. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 0.25 cubic foot per second to be diverted from January 1 to December 31 of each year. The maximum amount diverted under this permit shall not exceed 181 acre-feet per year. (0000005)
6. The amount authorized for appropriation may be reduced in the license if investigation warrants. (0000006)
7. Construction work shall begin within two years of the date of this permit and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted, this permit may be revoked. (0000007)
8. Construction work shall be completed by December 31, 1992. (0000008)
9. Complete application of the water to the authorized use shall be made by December 31, 1993. (0000009)
10. Progress reports shall be submitted promptly by permittee when requested by the State Water Resources Control Board until license is issued. (0000010)
11. Permittee shall allow representatives of the State Water Resources Control Board and other parties as may be authorized from time to time by said Board, reasonable access to project works to determine compliance with the terms of this permit. (0000011)
12. Pursuant to California Water Code Sections 100 and 275, and the common law public trust doctrine, all rights and privileges under this permit and under any license issued pursuant thereto, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Resources Control Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

The continuing authority of the Board may be exercised by imposing specific requirements over and above those contained in this permit with a view to eliminating waste of water and to meeting the reasonable water requirements of permittee without unreasonable draft on the source. Permittee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to: (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

The continuing authority of the Board also may be exercised by imposing further limitations on the diversion and use of water by the permittee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution Article X, Section 2; is consistent with the public interest and is necessary to preserve or restore the uses protected by the public trust. (0000012)

13. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the State Water Resources Control Board if, after notice to the permittee and an opportunity for hearing, the Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the Board finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges. (0000013)

14. For the protection of fish and wildlife, 50% of the surface flow from the source spring shall be bypassed at all times. (0140060)

15. All diversion and bypass facilities necessary to divert under and comply with the terms and conditions of this permit shall be approved by the California Department of Fish and Game, Region 2 prior to construction of said facilities. (0140300)

16. No water shall be diverted under this permit until permittee has installed a device, satisfactory to the State Water Resources Control Board, which is capable of measuring the flow required by the conditions of this permit. Said measuring device shall be properly maintained. (0060062)

17. Permittee and any assignee or transferee of permittee shall not enhance or enlarge the natural flow of the source spring under this permit by drilling, boring, pumping or any similar device, provided however, that the utilization of a drain or sump (i.e., a french drain) at the outlet of the spring shall not be deemed to constitute an enhancement or enlargement of the natural flow of the spring. Permittee and any transferees of permittee may, however, use pumps to transfer water from one holding tank to other holding tanks. (0560500)

18. Prior to diverting water under this permit, permittee shall develop a detailed mitigation and monitoring program, subject to the approval of the California Department of Fish and Game, to assure that at least 90% of the pre-project alders are adequately maintained. The monitoring program shall include specific criteria to measure the effectiveness of the mitigation program. Mitigation monitoring reports, that include corrective recommendations to ensure successful mitigation, shall be submitted to the California Department of Fish and Game and the State Water Resources Control Board annually for a minimum of three years. (0390300)

19. This permit is subject to prior rights. Permittee is put on notice that during some years water will not be available for diversion during portions or all of the season authorized herein. The annual variations in demands and hydrologic conditions in the Sacramento River Basin are such that in any year of water scarcity the season of diversion authorized herein may be reduced or completely eliminated on order of this Board made after notice to interested parties and opportunity for hearing. (0000090)

20. During the period between June 16 and October 31 if, in the absence of permittee's diversion, hydraulic continuity would exist between permittee's diversion point and the North Fork American River, permittee shall not divert water under this permit. (0000110)

21. This permit is specially subject to the prior rights of Joseph D. Hacker III under appropriation issued pursuant to licensed Application 5214. (0460800)

This permit is issued and permittee takes it subject to the following provisions of the Water Code:

Section 1390. A permit shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code), but no longer.

Section 1391. Every permit shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a permit is issued takes it subject to the conditions therein expressed.

Section 1392. Every permittee, if he accepts a permit, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any permit granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any permittee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any permittee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

Dated: JUNE 16 1989

STATE WATER RESOURCES CONTROL BOARD

Roger L. Hummer
for Chief, Division of Water Rights